

(Regulations of the Fair Political Practices Commission Title 2, Division 6 of the California Code of Regulations)

18740. Privileged Information: Statements of Economic Interests

An official need not disclose under Government Code Section 87207(b) the name of a person who paid fees or made payments to a business entity if disclosure of the person's name would violate a legally recognized privilege under California law. Such a person's name may be withheld in accordance with the following procedure:

(a) An official who believes that a person's name is protected by a legally recognized privilege may decline to report the name, but shall file with his Statement of Economic Interests an explanation for such nondisclosure. The explanation shall separately state for each undisclosed person the legal basis for assertion of the privilege and, as specifically as possible without defeating the privilege, facts which demonstrate why the privilege is applicable.

(b) With respect to each undisclosed person, the official shall state that to the best of his knowledge he has not and will not make, participate in making, or in any way attempt to use his official position to influence a governmental decision when to do so constituted or would constitute a violation of Government Code Section 87100.

(c) The Executive Director may request further information from the official and, if no legal or factual justification sufficient to support assertion of the privilege is shown, may order that the disclosure required by the Act be made. The official shall, within 14 days after receipt of an order from the Executive Director, either comply with the order or, if he wants to challenge the determination of the Executive Director appeal the determination, in writing, to the Commission.

(d) If the Executive Director determines that nondisclosure is justified because of the existence of a privilege, the matter shall be referred to the Commission.

(e) The Commission shall review an appeal filed under paragraph (c) or a recommendation made by the Executive Director under paragraph (d) at a meeting held no less than 14 days after notice of the meeting is mailed to the official, the Attorney General and both the district attorney and the city attorney of the jurisdictions in which the official's residence and principal place of business are located. The Commission shall decide whether nondisclosure is warranted by issuing an opinion under Government Code Section 83114 and shall treat the explanation for nondisclosure accompanying the official's Statement of Economic Interests as an opinion request. The procedures set forth in 2 Cal. Code of Regs. Sections 18320-18324, however, shall not apply to opinions issued pursuant to this regulation.

(f) If the Commission orders an official to disclose, the official must comply within 14 days. The Executive Director may, for good cause, extend any of the time periods established in this regulation.

COMMENT: A person's name is not ordinarily protected from disclosure by the law of privilege in California. Under current law, for example, a name is protected by the attorney-client privilege only when facts concerning an attorney's representation of an anonymous client are publicly known and those facts, when coupled with disclosure of the client's identity, might expose the client to an official investigation or to civil or criminal liability. See, e.g., *Brunner v. Superior Court*, 51 Cal. 2d 616, 618 (1959); *Ex parte McDonough*, 170 Cal. 230 (1915); *Baird v. Koerner* 279 F.2d 623, 630 (9th Cir. 1960); and

cases compiled in re Grand Jury Proceedings, 517 F.2d 666, 670-71 (5th Cir 1975). A patient's name has been protected by the physician-patient privilege only when disclosure of the patient's name would also reveal the nature of the treatment received by the patient because, for example, the physician is recognized as a specialist. See, e.g., *Marcus v. Superior Court*, 18 Cal.App. 3d 22, 24-25 (1971) and *Ascherman v. Superior Court*, 254 Cal.App. 2d 506, 515-16 (1967). The names of business customers are not protected by the trade secret privilege unless, because of surrounding circumstances, disclosure of a particular customer's identity would also result in disclosure of special needs and requirements of the customer that are not generally known to competitors. See, e.g., *King v. Pacific Vitamin Corp.*, 256 Cal.App. 2d 841, 846-49 (1967) and *Peerless Oakland Laundry Co. v. Hickman*, 205 Cal.App. 2d 556, 559-60 (1962).

Note: Authority: Section 83112, Gov. Code

Reference: Section 87207(b), Gov. Code

History

- (1) New section filed 7-28-76; effective thirtieth day thereafter.
- (2) Amendment of subsections (c)-(f) filed 11-2-78; effective thirtieth day thereafter.
- (3) Amendment filed 4-28-82; effective thirtieth day thereafter.
- (4) Amendment filed 10-23-96; effective upon filing.